S.B.CRIMINAL MISC. CANCELLATION OF BAIL APPLICATION NO. 64/2007

Kumari Saahi vs. The State of Rajasthan

Date of Order:03.10.2007

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE

Mr. M.K. Kaushik, for the petitioner.
Mr. Jinendra Jain, Public Prosecutor.
Mr. Yogesh Singhal, for the respondent.

Heard learned counsel for the petitioner, learned Public Prosecutor for State and learned counsel for the complainant and also perused the material on record.

This application for cancellation of bail is against the order dated 31/10/2006 passed by ADJ No. 2, Bayana, District Bharatpur whereby the accused Harishanker was granted bail. There is no dispute with regard to the fact that the accused-respondent had not misused the liberty of bail because such is not at all the case of the petitioner. The case of the petitioner is that the learned court below has erroneously granted bail and not considered the facts and circumstances and the gravity of the offence.

Learned counsel for the petitioner has made the primary submission that the learned court below has granted bail in an offence of rape. He further submits that looking to the nature of the offence the learned court below ought not to have granted concession of bail to the petitioner. In support of his submissions,

the counsel for petitioner has relied upon the case of 'Anil Kumar Tulsiyani V/s State of U.P. & Anr., JT 2006 (5) SC 411. Accordingly he has submitted that even if the accused-respondent is on bail for a long time and not misuse the liberty, the correctness of the order passed by the court below granting bail can be looked into. He has further submitted that by relying upon the case of Anil Kumar Tulsiyani (Supra) that the well settled principals of law of granting bail in non-bailable offences is the gravity and the nature of the offence. According to him, taking into the said principals, the learned court below has erred in passing the impugned order.

Learned counsel for the respondent-accused has raised objection that this application for cancellation of bail granted by the court below on 31st of October, 2006 should have been first filed before the same court i.e. the Court of Session. Therefore this bail application directly to this Court, is not maintainable. In support of his argument he relied upon the case of Mehoob Dawood Shekh V/s State of Maharashtra 2004 (2) SCC 362. He has further submitted that a perusal of the order impugned passed by the court below on 31st of October, 2006 para 3 in particular goes to show that the evidence on record collected by the investigation agency has been extensively looked into. He has also submitted that taking into consideration the age of the prosecutrix and the manner in which the incident had taken place where the prosecutrix admittedly visited many places, reveals that it is rather a case of consent. On

the basis of the aforesaid submission, learned counsel for the respondent-accused has prayed that even otherwise on the merits of the case the order passed by the court below deserves to be upheld.

I have given my thoughtful consideration to the aforesaid submissions made by the rival parties. As in this matter, the application for cancellation had been pending since 3rd of January 2007 and now the matter has been heard also on merits, I do not consider it necessary to discuss in detail the objections raised by the counsel for the respondent-accused regarding maintainability of the application.

But the case on which the respondent has relied, Mehboob Dawood Shekh (supra) does not support him. In fact it was a case of grant of bail by High Court and lays down that the conventional practice of placing the matter before the same learned Judge who granted the bail need not be followed. The objection of maintainability raised by the counsel for the respondent is not sustainable in view of the Law laid down by Hon'ble Supreme Court in case of Puran V/s Rambilas & Anr. AIR 2001 SC. 2023.

A perusal of the order impugned dated 31st of October,2006 goes to show that the learned court below has passed a detailed order giving all material facts and has given the reasoning after taking into consideration the evidence on record, as for instance the medical evidence, the statement of Smt. Draupdi, mother of the prosecutrix, Kanwar Singh, Mukesh, Budhha Ram,

P.N. Mishra, Smt. Munesh and Smt. Munni.

The judgment of Anil Kumar Tulsiyani, which the learned counsel for the petitioner has relied upon needs to be considered with all due respect in that case an application for cancellation of bail was not considered. In para-9 of the judgment it was held “We are not considering any application for bail.” It is noteworthy that in case of Anil Kumar Tulsiyani, the accused was an Advocate charged with an offence of murder along with his wife. Taking note of glaring facts of that case it was held as under.

“The High Court has not at all considered the gravity and the nature of the offence in which the deceased stated to be a close friend of the respondent-accused has been shot at in his house, that too inside his bedroom. Prima facie, the prosecution story has disclosed that a heavy burden is laid on the accused to explain the circumstances.” Furthermore, the Hon'ble Court observed:-'' Being an advocate he is in a commanding position and standing in the society. Keeping in view his position in the background, a reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or intimated by using his influence and position cannot be ruled out.”

The Hon'ble Supreme Court has laid down the principals in respect of cancellation of bail in the case of Aslam Babulal Desai V/s State of Maharashtra, AIR 1993 SC. 1.

Therefore taking into consideration the aforesaid facts

and circumstances of the present case the order passed by the court below giving material facts and evidence on record and also the fact that the case of Anil Kumar Tulsiyani had its own peculiar facts and an application for cancellation of bail was not under consideration, I do not consider it just and proper to interfere in the order passed by the court below on 31st October, 2006. The said order has been passed after giving reasons and discussing the evidence on record.

Consequently, this application for cancellation of bail is dismissed.

(RAGHUVENDRA S. RATHORE),J.

RV/-Jr.P.A.